

Boler v Crone Law Group, P.C.
2021 NY Slip Op 31411(U)
April 27, 2021
Supreme Court, New York County
Docket Number: 154839/2020
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK, PART IV

-----X
 KIMBERLY D. BOLER,

Plaintiff,

-against-

THE CRONE LAW GROUP, P.C.,

Defendant.
 -----X

NERVO, J.

DECISION AND ORDER

Index Number
 154839/2020

Mot. Seq. 001

Plaintiff seeks an order, pursuant to CPLR § 3124, compelling defendant to provide documents in response to her November 18, 2020 demand. Plaintiff consented to defendant's request to extend its time to respond to the demands first, to December 22, 2020, and then again, to January 8, 2021. On January 8, 2021, defendant responded to the request but predicated the production of documents on plaintiff entering into a confidentiality agreement. Plaintiff executed and returned defendant's confidentiality agreement on January 20, 2021, the same day defendant provided a copy of the agreement. Thereafter, defendant advised plaintiff that it was searching for responsive documents and would provide the documents forthwith. At the time of filing this motion, several months later, defendant had not provided the documents.

Defendant opposes, contending that the instant motion is waste of judicial resources, defendant requires more time to respond to the demand, counsel has not represented defendant before and such unfamiliarity with defendant's business has slowed production, other matters were more important requiring counsel's immediate

attention, and defendant produced over a thousand pages of documents on the same day as filing their opposition to this motion (opposition at ¶ 3 -10).

CPLR § 3101(a) directs that there “shall be full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof” (*Forman v. Henkin*, 30 NY3d 656, 661 [2018]). The test utilized is “one of usefulness and reason” (*id.*). Responses or objections to discovery demands are due within 20 days (CPLR §§ 3120 and 3122). Where a party fails to respond or comply with a demand, the party seeking disclosure may move to compel such response (CPLR § 3124).

Here, there is no dispute that the requested documents are material to this matter and defendants admit they have produced only some of the documents requested nearly four months after plaintiff served her original demand. However, contrary to defendant’s contention, the Court does not find the instant motion a waste of judicial resources, given that defendant’s partial production occurred contemporaneously with filing its opposition to the instant motion. “A party that permits discovery to ‘trickl[e] in [with a] cavalier attitude should not escape adverse consequence” (*Henderson-Jones v. City of New York*, 87 AD3d 498, 504 [1st Dept 2011] quoting *Figdor v. City of New York*, 33 AD3d 560, 561 [1st Dept 2006]).

Considering that defendant has advised many of the documents requested are of a privileged nature, and further considering potential volume of documents, the Court finds the following discovery schedule appropriate for their production.

ORDERED that defendant shall produce all documents responsive to plaintiff's November 18, 2020 demand within 90 days of notice of entry of this order; and it is further

ORDERED that defendant shall serve a particularized privilege log contemporaneously with the production of the above documents, and such log shall state the date of the communication/document, the parties thereto, and the subject matter of the communication sufficient to establish the nature of the privilege including the period of the attorney-client relationship, if applicable, for all material requested which is believed to be privileged; and it is further

ORDERED that defendant shall contemporaneously serve a *Jackson* affidavit for all material requested which it cannot locate, and such affidavit shall provide the means and methods utilized to locate the material; and it is further

ORDERED that failure to timely provide the above material shall result in sanctions, including, but not limited to, the striking of pleadings, in the Court's discretion and upon further application; and it is further

ORDERED that the parties shall appear for a preliminary conference on September 14, 2021 at 3:00pm via Microsoft Teams; and it is further

ORDERED that the parties shall complete a proposed preliminary conference form, available at: <https://www.nycourts.gov/LegacyPDFS/courts/1jd/supctmanh/PC-Genl.pdf>, and upload same to NYSCEF on or before September 10, 2021; to the extent the parties cannot reach agreement regarding material contained in the preliminary conference form, they shall submit a letter, via NYSCEF, outlining same contemporaneously with the proposed preliminary conference order.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Dated: April 27, 2021

ENTER:



Hon. Frank P. Nervo, J.S.C.